S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

BERNADETTE B. LOWE,

Plaintiff-Appellee,

v

KENNETH LOWE,

Defendant-Appellant.

UNPUBLISHED
February 14, 2006

No. 256928
Lapeer Circuit Court
LC No. 03-033440-DO

Before: Wilder, P.J., and Zahra and Davis, JJ.

PER CURIAM.

Defendant appeals as of right a judgment of divorce, challenging the trial court's division of marital property and its decision not to award him spousal support. We affirm.

We review the trial court's findings of fact for clear error. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). A trial court's findings of fact will be upheld unless, after reviewing the whole record, we are "left with a definite and firm conviction that a mistake has been made." *McNamara v Horner*, 249 Mich App 177, 188; 642 NW2d 385 (2002). We review the court's discretionary dispositional ruling to determine whether it is fair and equitable under the circumstances and will uphold the ruling "unless left with a firm conviction that the division was inequitable." *Sparks*, *supra* at 152.

Defendant first argues that the trial court did not equitably divide the value of certain vacant land purchased during the course of the marriage. We disagree. In dividing a marital estate, a trial court must first determine which assets are marital assets and which assets are separate assets belonging to the parties' individually. *Reeves v Reeves*, 226 Mich App 490, 493-494; 575 NW2d (1997). To determine if the property division is equitable, courts look to the marital assets and do not consider either party's separate assets. *Id*., 497.

The trial court concluded that the vacant land was plaintiff's separate property. Defendant argues that the trial court stated during trial that *all* disputed property was marital property. Our reading of the trial court's statement, in context, is that the trial court was referring to a different piece of property. Plaintiff presented evidence that the vacant land was purchased solely from her separate assets. We are not firmly convinced that the trial court erred in finding that it was plaintiff's separate property.

Defendant next argues that the trial court misapplied the law when it refused to divide the passive appreciation of the vacant land's value because it occurred during the marriage. We

disagree. Defendant argues that the rule in *Reeves* precludes division of passive appreciation of property value only where that appreciation occurs before the marriage. However, *Reeves* held that the wholly passive appreciation of a separate asset that occurred during the marriage was not part of the marital estate in issue. *Id*., 495-496. See also *Dart v Dart*, 460 Mich 573, 585 n 6; 597 NW2d 82 (1999) (noting that *Reeves* "concluded that the marital estate did include the appreciation in value of the husband's separate assets that he actively managed during the marriage, but not the appreciation of his passive investments"). Nothing in *Reeves* suggests that the appreciation of a separate, nonmarital asset should become a marital asset simply because it appreciated during the marriage. Here, the vacant land was plaintiff's separate asset. Because it remained vacant and undeveloped at all times, the trial court did nor err in holding that any appreciation was wholly passive and therefore not subject to equitable division.

Defendant also claims that he is entitled to part of the vacant land's value under MCL 552.401, which allows a court to invade the separate assets of one party if the court finds from the evidence that "the [other] party contributed to the acquisition, improvement, or accumulation of the property." *Id*. Defendant argues that he contributed to acquiring the vacant land because he made improvements during the marriage to plaintiff's home that she owned before the marriage, proceeds from the sale of which were used to buy the vacant land. However, because defendant presented no evidence that his improvements increased the sale price of that home, we are not firmly convinced that the trial court clearly erred on this matter. Defendant also claims that he contributed to acquiring the vacant land because the parties discussed whether to buy the land and decided together to buy it. Because defendant has cited no authority for the proposition that such a discussion amounts to contributing to the acquisition of property within the meaning of MCL 552.401, we are unpersuaded. See *McCartney v Attorney General*, 231 Mich App 722, 725; 587 NW2d 824 (1998) (observing that this Court need not consider a position or argument when the appellant fails to provide any authority to support it).

Defendant next argues that the trial court erred when it awarded him less than one half of the equity value of the property that held the marital home (the Hosner property). We disagree. An equitable property division is not necessarily equal. *Gates v Gates*, 256 Mich App 420, 423; 664 NW2d 231 (2003). In any event, the record clearly shows that the court did divide the equity in the Hosner property equally. The court determined that the Hosner property had a value of $89,000 and that the $9,000 down payment on the property came from plaintiff's separate assets. Minus the down payment, see *Reeves, supra* at 495-496, defendant received half of the remaining equity.

We also reject defendant's argument that the trial court erred when it failed to award defendant any of the value in plaintiff's pension fund. The court found that the $38,000 in pension benefits that had accrued during the marriage were part of the marital estate. MCL 552.18. Against this, the court offset a variety of other undisclosed assets that defendant admittedly sold while the divorce was pending. By defendant's own estimation, the value of the items that defendant sold totaled $11,600 and the value of his items kept in the barn totaled $15,000. We do not believe that the trial court erred when it offset the value of those items against the accrued pension benefits.

Defendant next argues that the trial court erred in not awarding him spousal support. We disagree. "The main objective of alimony is to balance the incomes and needs of the parties in a way that will not impoverish either party, and alimony is to be based on what is just and

reasonable under the circumstances of the case." *Olson v Olson*, 256 Mich App 619, 631; 671 NW2d (2003).

A trial court should consider several nonexclusive factors to determine whether to award alimony. *Parrish v Parrish*, 138 Mich App 546, 554; 361 NW2d 366 (1984). Defendant argues that the trial court was required specifically to consider all of the factors listed in *Parrish*. However, these "factors are to be considered *wherever they are relevant to the circumstances* of a particular case . . . ." *Sparks, supra* at 159 (emphasis added). Defendant has not stated how the omitted factors were relevant or would have benefited him if considered. Because defendant may not assert error without supporting argument or authority, we deem this argument abandoned. See *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998).

In any event, the trial court's decision was clearly equitable under the circumstances. *Korth v Korth*, 256 Mich App 286, 288-289; 662 NW2d 111 (2003). Defendant argues that because plaintiff earned more and their needs were similar, he was entitled to an award of alimony. It does not necessarily follow that defendant's potential income would not meet his needs simply because his former spouse's income is at a certain level. Also, defendant does not argue that he would be impoverished by a denial of alimony. Because "the main objective of alimony is to balance the incomes and needs of the parties in a way that will not impoverish either party," *Olson, supra* at 631, and given the court's consideration of the relevant factors, we are not firmly convinced that the trial court's denial of alimony was clearly inequitable under the circumstances. *Korth, supra*. Accordingly, the trial court did not err in denying defendant alimony.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Brian K. Zahra
/s/ Alton T. Davis